

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID YANCY CARINO,

Plaintiff,

v.

JUSTIN HEATH, et al.,

Defendants.

No. 2:22-cv-1727 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil action. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. Since plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 Having conducted the required screening, the court finds that plaintiff may proceed on
7 claims for excessive force arising under the Eighth Amendment against defendants Heath,
8 Villanueva, Houston and Noriega. In all other respects, the complaint fails to state a claim upon
9 which relief can be granted. At this point, plaintiff has two options: 1) proceed on the claims
10 identified above; or 2) attempt to cure the deficiencies in an amended complaint.

11 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
12 complained of have resulted in a deprivation of plaintiff’s Constitutional rights. See Ellis v.
13 Cassidy, 625 F.2d 227 (9th Cir. 1980). In his complaint, plaintiff complains about falsification of
14 documents, but does not indicate how that violates his Constitutional rights.

15 Also, plaintiff is informed that the court cannot refer to a prior pleading in order to make
16 plaintiff’s amended complaint complete. Local Rule 220 requires that an amended complaint be
17 complete in itself without reference to any prior pleading. This is because, as a general rule, an
18 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th
19 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any
20 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
21 and the involvement of each defendant must be sufficiently alleged.

22 In accordance with the above, IT IS HEREBY ORDERED that:

23 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.

24 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
25 shall be collected and paid in accordance with this court’s order to the Director of the California
26 Department of Corrections and Rehabilitation filed concurrently herewith.

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1 3. Plaintiff is granted 21 days within which to complete and return the attached form
2 notifying the court whether he wants to proceed on the claims described in this order or whether
3 he wishes to file an amended complaint in an attempt to cure the deficiencies in his original
4 complaint. If plaintiff does not return the form, this action will proceed on the claims described
5 above.

6 Dated: October 11, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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PLAINTIFF'S NOTICE OF
HOW TO PROCEED

Check one:

_____ Plaintiff wants to proceed immediately on excessive force claims arising under the Eighth Amendment against defendants Heath, Villanueva, Houston and Noriega.

_____ Plaintiff wants time to file an amended complaint.

DATED:

Plaintiff's Signature